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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 810/2002

New Delhi this the 6th day of November, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Sh. Mohd Islam,
Head Clerk,
Deptt. of Publications,
Civil Lines, Delhi-110054

.. Applicant

(By Advocate Shri Inderjit Singh)

VERSUS

1. Controller of Publications,
Department of Publication,
Govt. of India, Ministry of
Urban Development, Civil Lines,
Delhi-54

2. The Secretary to the Government
of India, Ministry of Urban
Development and Poverty
Alleviation, Nirman Bhawan,
New Delhi.

.. Respondents

(By Advocate Shri H.K. Gangwani)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

In this application, the applicant has prayed for quashing certain orders issued by the respondents, namely, dated 28.11.2001, 11.2.2002 and 1.3.2002, with further directions to the respondents to promote him on ad hoc basis with effect from 11.2.2002 and to pay him the pay and allowances as admissible to the post of Supervising Officer (S.O.) w.e.f. 28.11.2001.

2. We have heard Shri Inderjit Singh, learned counsel for the applicant and Shri H.K. Gangwani, learned counsel for the respondents and perused the pleadings and the other relevant documents on record.

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3. The respondents have passed the Office Order dated 28.11.2001, in which it has been stated that the applicant will look after the work of S.O. with immediate effect subject to the condition that he would get the pay benefits for that post after the outcome of Court case pending against him was known. By the subsequent Office Order dated 11.2.2002, the applicant was reverted to his substantive post as Head Clerk (HC) in Accounts II Section and it has been stated that he has not been found clear from vigilance angle due to criminal case pending against him in the criminal Court. No Rules have been produced by the respondents to substantiate the averments made in the impugned Office Order dated 28.11.2001 to deny the applicant pay benefits of the higher post of S.O. which the respondents have themselves directed that he should hold. In the facts and circumstances of the case, we see no good grounds to deny the applicant the benefits of pay and allowances due to him for discharging the duties and responsibilities of the higher post of S.O. for the period from 28.11.2001 till 11.2.2002. In this view of the matter, part of the impugned order dated 28.11.2001, as prayed for by Shri Inderjit Singh, learned counsel is quashed to the extent of denying the applicant the pay benefits, otherwise admissible to him for discharging the function in the higher post of S.O.

4. With regard to the other two impugned orders, namely, Office Order dated 11.2.2002 reverting the applicant to the post of H.C., it is stated that he was

not cleared from vigilance angle due to a criminal case pending against him in the Court and rejection of his representation by O.M.dated 1.3.2002. We have perused the replies filed by the respondents and also heard Shri H.K.Gangwani, learned counsel. He has drawn our attention to the Govt.of India, Department of Personnel and Training O.M.dated 14.9.1992. In the additional affidavit filed by the respondents on 25.10.2002, they have submitted that the applicant along with other employees of the Department were arrested and released on bail and consequent trial of the case in the Court is pending. They have also submitted that the applicant had been considered for the post of S.O. by the Departmental Promotion Committee (DPC) which met on 28.8.2002 and the recommendations have been kept in a sealed cover as per the DPC procedure.

5. With regard to one Shri Amar Dass who was also admittedly involved in the incident for which the applicant is facing criminal charge in the Court, the respondents have stated that no charges have been framed by the Court against Shri Amar Dass and, therefore, he was treated as clear from vigilance angle when the DPC met on 28.8.2002. Hence, there was no impediment in promoting Shri Amar Dass to the post of Head Clerk w.e.f. 29.8.2002.

6. Shri Inderjit Singh, learned counsel has relied on the judgements of the Hon'ble Supreme Court in UOI and Others Vs. Dr.(Smt.) Sudha Salhan (AIR 1998(SC) 1094) and

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Kanhaiya Lal Shivram Kanitkar Vs. UOI & Ors (2001 (3) CAT Bombay Bench). Learned counsel has submitted that the incident on the basis of which the criminal case is stated to be pending against the applicant occurred on 25.5.2000 and the respondents ought to have considered the applicant's case for ad hoc promotion to the post of S.O. which they have not done.

7. In Kanhaiya Lal Shivram Kantikar's case (supra), the Tribunal had directed the competent authority to consider the applicant's case for promotion on ad hoc basis as per his seniority, without any reference to the pending vigilance enquiry in terms of the relevant instructions issued by the respondents in that case i.e. Post and Telegraphs Department. In that case, they have also relied on the judgement of the Hon'ble Supreme Court in UOI Vs. K.V.Jankiraman (1991(2)Scale SC 423). Learned counsel for the applicant has submitted that such a direction may be granted in the present case, as there is no reason why the applicant should not be considered for promotion on ad hoc basis, which apparently the respondents had not done while issuing the impugned order dated 28.11.2001 and later cancelling it for no rhyme ^{or} ~~and~~ reason.

8. In the present case, according to the respondents, the DPC which met on 28.8.2002 had considered the case of the applicant for promotion to the post of S.O and the recommendations have been kept in a sealed cover.

JB.

However, it is relevant to note that the respondents have themselves stated that the criminal case pending against the applicant continues in the same position. In the circumstances, the respondents are directed to consider the applicant's case for promotion to the next post of S.O on ad hoc basis in accordance with the relevant instructions issued by the Govt. of India, Department of Personnel and Training O.M. dated 14.9.1992 and the aforesaid judgements relied upon by the learned counsel for the applicant. Such ad hoc promotion, however, can only be given effect to prospectively in accordance with the relevant rules and instructions.

9. In the result, for the reasons given above, OA succeeds to the extent referred to in Paras 3 and 8 above. Necessary action shall be taken by the respondents within a period of one month from the date of receipt of a copy of this order, with intimation to the applicant.

No order as to costs.

(Govindan S. Tampi)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)